

DANIEL JOHNSON, JR. (SBN 574090)  
RITA E. TAUTKUS (SBN 162090)  
MORGAN, LEWIS & BOCKIUS LLP  
One Market, Spear Street Tower  
San Francisco CA 94105  
Telephone: (415) 442-1000  
Facsimile: (415) 442-1001  
Email: djjohnson@morganlewis.com  
Email: rtautkus@morganlewis.com

Attorneys for Plaintiff  
UNIVERSITY OF PITTSBURGH

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

UNIVERSITY OF PITTSBURGH OF THE  
COMMONWEALTH SYSTEM OF HIGHER  
EDUCATION d/b/a UNIVERSITY OF  
PITTSBURGH

Plaintiff,

v.

VARIAN MEDICAL SYSTEMS, INC.

Defendant.

Case No. CV 08-02973 MMC

**DECLARATION OF RITA E. TAUTKUS  
IN RESPONSE TO JULY 16, 2008  
COURT ORDER RE:  
ADMINISTRATIVE MOTIONS TO  
SEAL DOCUMENTS**

Date: August 29, 2008  
Time: 9:00 a.m.  
Courtroom 7, 19th Floor

1 I, Rita E. Tautkus, declare as follows:

2 1. I am Of Counsel with the law firm of Morgan, Lewis & Bockius LLP, attorneys of  
3 record for University of Pittsburgh. I am licensed to practice law before the Courts for the State of  
4 California. The matters referred to in my declaration are based on my personal knowledge and, if  
5 called as a witness, I could and would testify competently to those matters.

6 2. I make this declaration pursuant to the Court's Order dated July 16, 2008, which  
7 directed designating parties to file "a declaration establishing that each document it has designated as  
8 confidential is sealable, or withdraw the designation of confidentiality."

9 3. I spoke with Mr. William B. Mallin, General Counsel for non-party Eckert Seamans  
10 Cherin & Melloy, LLC ("Eckert Seamans"), on July 21, 2008 about this Court's July 16, 2008 Order  
11 and Exhibit F attached to the Sealed Declaration of Matthew H. Poppe in Support of Varian's  
12 Motion to Transfer Action to U.S. District Court for Western District of Pennsylvania. Mr. Mallin  
13 told me that Eckert Seamans does not object to Exhibit F being filed in the public record.  
14 Specifically, Mr. Mallin stated that pages 1-3, 5, 6, 8, 14-23, and 150 of the transcript of the  
15 deposition of Richard Westerhoff taken on October 3, 2007 in the Western District of Pennsylvania  
16 action, Case No. 07-0491, may be filed in the public record and Eckert Seamans withdraws any  
17 designation of confidentiality with respect those pages. Attached hereto as Exhibit A is a true and  
18 correct copy of an e-mail dated July 21, 2008, from Mr. Mallin that confirms the same.

19 4. Attached hereto as Exhibit B is a true and correct copy of the Declaration of  
20 Charalambos Athanassiou in Support of Administrative Motion to File Certain Documents Under  
21 Seal, signed by Charalambos Athanassiou.

22 5. Attached hereto as Exhibit C is a redacted version of Exhibit W to the Sealed  
23 Declaration of Matthew H. Poppe in Support of Varian's Motion to Transfer Action to U.S. District  
24 Court for Western District of Pennsylvania that includes all of the portions of Exhibit W to the  
25 Sealed Declaration for which the designation of confidentiality has been withdrawn.

26 6. Attached hereto as Exhibit D is a true and correct copy of the Declaration of Laura  
27 Hillock in Response to July 16, 2008 Court Order Re: Administrative Motions to Seal Documents,  
28 signed by Laura Hillock.

1           7.       Attached hereto as Exhibit E is a redacted version of Exhibit R to the Sealed  
2 Declaration of Matthew H. Poppe in Support of Varian's Motion to Transfer Action to U.S. District  
3 Court for Western District of Pennsylvania that includes all of the portions of Exhibit R to the Sealed  
4 Declaration for which the designation of confidentiality has been withdrawn.

5           8.       The designation of confidentiality has been withdrawn from Exhibit 23 of the  
6 Declaration of Rita E. Tautkus in Support of Plaintiff's Administrative Motion to File Certain  
7 Documents Under Seal to University of Pittsburgh's Opposition to Transfer by Varian Medical  
8 Systems, Inc. Accordingly, Exhibit 23 is attached hereto as Exhibit F to be made part of the public  
9 record.

10          9.       University of Pittsburgh does not object to Exhibits A-Q, T-V, and X of the Sealed  
11 Declaration of Matthew H. Poppe in Support of Varian's Motion to Transfer Action to U.S. District  
12 Court for Western District of Pennsylvania being filed in the public record.

13          10.      I am informed and believe that University of Pittsburgh Medical Center ("UPMC")  
14 contacted University of Pittsburgh and told University of Pittsburgh that UPMC does not object to  
15 Exhibits U, V, and X of the Sealed Declaration of Matthew H. Poppe in Support of Varian's Motion  
16 to Transfer Action to U.S. District Court for Western District of Pennsylvania being filed in the  
17 public record.

18          11.      I was contacted by James Mercolini, Assistant General Counsel for Carnegie Mellon  
19 University ("CMU"), and told that CMU withdrew any designation of confidentiality with respect to  
20 Exhibits D, E, and H-Q of the Sealed Declaration of Matthew H. Poppe in Support of Varian's  
21 Motion to Transfer Action to U.S. District Court for Western District of Pennsylvania.

22               I declare under penalty of perjury under the laws of the United States of America that the  
23 foregoing is true and correct and that this declaration was executed this 22nd day of July, 2008, at  
24 Palo Alto, California.

25  
26                               By: /s/ Rita E. Tautkus

27                               Rita E. Tautkus  
28

# **EXHIBIT A**



WMallin@eckertseamans.com

07/21/2008 04:37 PM

To "Rita E. Tautkus" <rtautkus@morganlewis.com>

cc

bcc

Subject University of Pgh. v. Varian Medical Systems Inc.

Dear Ms. Tautkus:

As you know, I am General Counsel to the law firm of Eckert Seamans Cherin & Mellott, LLC, and I am authorized to act on behalf of that firm. I represented Eckert Seamans at its deposition by designated representative Richard Westerhoff, Esq. taken on October 3, 2007 in Pittsburgh, Pennsylvania in an action pending in the United States District Court for the Western District of Pennsylvania. That deposition was designated as confidential.

I have been informed that in a litigation pending in the United States District Court for the Northern District of California, San Francisco Division, an issue has arisen as to whether pages 1-3, 5, 6, 8, 14-23, and 150 are to be considered confidential. Eckert Seamans Cherin & Mellott, LLC withdraws its designation of confidentiality with respect to those pages and therefore those pages may be filed in the public record in the action pending in California.

I understand that you will advise the Court that Eckert Seamans has withdrawn the designation of confidentiality with respect to the pages listed above. If you need further information, please let me know.

William B. Mallin, Esq.  
General Counsel  
Eckert Seamans Cherin & Mellott, LLC  
600 Grant Street, 44th Floor  
Pittsburgh, PA 15219  
Direct: (412) 566-6027  
Fax: (412) 566-6099

This communication may contain federal tax advice. Recent IRS regulations require us to advise you that any discussion of federal tax issues in this communication was not intended or written to be used and cannot be used to avoid any penalty under federal tax law or to promote, market or recommend any transaction or matter addressed herein. Only formal, written tax opinions meeting these IRS requirements may be relied upon for the purpose of avoiding tax-related penalties. Please contact one of the Firm's Tax partners if you have any questions regarding federal tax advice.

---

Scanned by Symantec Anti-Virus and Content Filtering before delivery.

This e-mail message and any files transmitted with it are subject to attorney-client privilege and contain confidential information intended only for the person(s) to whom this email message is addressed. If you have received this e-mail message in error, please notify the sender immediately by telephone or e-mail and destroy the original message without making a copy. Thank you.

Neither this information block, the typed name of the sender, nor anything else in this message is intended to constitute an electronic signature

unless a specific statement to the contrary is included in this message.

# **EXHIBIT B**

1 DANIEL JOHNSON, JR. (SBN 574090)  
RITA E. TAUTKUS (SBN 162090)  
2 MORGAN, LEWIS & BOCKIUS LLP  
One Market, Spear Street Tower  
3 San Francisco CA 94105  
Telephone: (415) 442-1000  
4 Facsimile: (415) 442-1001  
Email: djjohnson@morganlewis.com  
5 Email: rtautkus@morganlewis.com

6 Attorneys for Plaintiff  
UNIVERSITY OF PITTSBURGH  
7 AND  
Non-Party, CHARALAMBOS ATHANASSIOU  
8

9 UNITED STATES DISTRICT COURT  
10 NORTHERN DISTRICT OF CALIFORNIA  
11 SAN FRANCISCO DIVISION

12 UNIVERSITY OF PITTSBURGH OF THE  
13 COMMONWEALTH SYSTEM OF HIGHER  
14 EDUCATION d/b/a UNIVERSITY OF  
PITTSBURGH

15 Plaintiff,

16 v.

17 VARIAN MEDICAL SYSTEMS, INC.

18 Defendant.  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Case No. CV 08-02973 MMC

**DECLARATION OF CHARALAMBOS  
ATHANASSIOU IN SUPPORT OF  
ADMINISTRATIVE MOTION TO FILE  
DOCUMENTS UNDER SEAL**

Date: August 29, 2008  
Time: 9:00 a.m.  
Courtroom 7, 19th Floor



1 I, Charalambos Athanassiou, declare as follows:

2 1. I am one of the inventors of each of the patents in suit, U.S. Patent Nos. 5,727,554  
3 and 5,784,431. The matters referred to in my declaration are based on my personal knowledge and,  
4 if called as a witness, I could and would testify competently to those matters.

5 2. I was deposed by Varian Medical Systems, Inc. on November 16, 2007 in connection  
6 with the Western District of Pennsylvania action, Case No. 07-0491, pertaining to the same parties  
7 and patents-in-suit.

8 3. I have reviewed Exhibit W of the Sealed Declaration of Matthew H. Poppe In  
9 Support of Varian's Motion to Transfer Action to U.S. District Court for Western District of  
10 Pennsylvania, and found that it contains pages 2, 3, 6, 7, 12, and the certification page of the reporter  
11 of the transcript from my deposition taken on November 16, 2007 in the Western District of  
12 Pennsylvania action, Case No. 07-0491.

13 4. I understood at the time of the aforementioned deposition that the transcript of the  
14 deposition would be designated as Confidential Attorney Eyes Only pursuant to the Protective Order  
15 (Docket No. 29, as amended Docket No. 331) entered in the Western District of Pennsylvania action,  
16 Case No. 07-0491.

17 5. During the deposition, I was asked to give, and did provide, my home address. I do  
18 not ordinarily provide my home address unless required to do so. I do not publish my home address  
19 or otherwise cause it to become public. In addition, I ordinarily take steps to keep my home address  
20 private. Therefore, I request that line 9 of page 7 of the November 16, 2007 deposition transcript be  
21 filed under seal. I have no objection to the remaining pages of Exhibit W, namely 2, 3, 6, 7  
22 (excluding line 9), 12, and the certification page of the reporter, being filed in the public record.

23 I declare under penalty of perjury under the laws of the United States of America that the  
24 foregoing is true and correct and that this declaration was executed this 21 day of July, 2008, at  
25 Pittsburgh, Pennsylvania.

26  
27 By:   
28

Charalambos Athanassiou

# **EXHIBIT C**

# **EXHIBIT W**

( REDACTED )

IN THE UNITED STATES DISTRICT  
NORTHERN DISTRICT OF CALIFORNIA

UNIVERSITY OF PITTSBURGH, )  
Plaintiff )  
vs. ) Case No.  
VARIAN MEDICAL SYSTEMS, ) 07-CV-0791 (AJS)  
Defendant. ) Western District of  
Pennsylvania  
\_\_\_\_\_ )

Deposition of CHARALAMBOS ATHANASSIOU  
taken on behalf of the Defendant at  
1000 Marsh Road, Menlo Park, CA.  
Beginning at 9:06 a.m. and ending at  
5:38 p.m. on Friday, November 16, 2007  
before Rick Posner, CSR No. 5040.

APPEARANCES

Representing: Plaintiff

Morgan, Lewis & Brockius, LLP

John D. Zele, Esq.

1111 Pennsylvania Avenue, NW

Washington DC, 20004

202/739-5418

jzele@morganlewis.com

Representing: Defendant

Orrick, Herrington & Sutcliffe

William Anthony, Esq.

1000 Marsh Road

Menlo Park, CA 94025

650/614-7645

wanthony@orrick.com

ALSO PRESENT: Sean Grant, Videographer

1  
2 THE VIDEOGRAPHER: Good morning. The date  
3 is November 16th, 2007. The time is 9:06 a.m. This  
4 begins the videotaped deposition of Mr. Harry  
5 Athanassiou. The location of this deposition is at  
6 the offices of Orrick, Herrington & Sutcliffe  
7 located at 1000 Marsh Road, Menlo Park, 94025.

8 This deposition is in regards to  
9 University of Pittsburgh versus Varian Medical  
10 Systems, Inc., as filed in the United States  
11 District Court for the Western District of  
12 Pennsylvania. The case number is 2:07-CV-00491.

13 The videographer is Sean Grant of US Legal  
14 Support. The court reporter is Rick Posner, also of  
15 US Legal Support.

16 Counsel, please identify yourselves for  
17 the record.

18 MR. ANTHONY: William Anthony, Orrick,  
19 representing the defendant, Varian.

20 MR. ZELE: John Zele at Morgan, Lewis &  
21 Bockius, representing Mr. Athanassiou.

22 (Witness sworn.)

23  
24 //

25 //

EXAMINATION

BY MR. ANTHONY:

Q Good morning, Mr. Athanassiou.

A Good morning.

Q Hopefully, I won't kill that too much.

Could you give your full name and home address, please.

A My name is Charalambos Athanassiou, and I live in [REDACTED].

Q And have you had your deposition taken before?

A No.

Q Have you had discussions with counsel for University of Pittsburgh where he's described the proceeding today?

MR. ZELE: Just representing Mr. Athanassiou today.

MR. ANTHONY: Excuse me.

MR. ZELE: For the record, I'm representing Mr. Athanassiou.

BY MR. ANTHONY:

Q Have you had discussions with your counsel as to what the nature of the proceedings are today?

A Yes.

Q Let me just supplement that, perhaps



1           A    I was hired as an image processing and  
2   automation engineer in 1998, and then through the  
3   years, I get different promotions. And by 2007, I  
4   was bioinformatics manager, who also includes the  
5   responsibility of supervising the teams, software  
6   processing, software engineering, IT and in general  
7   everything computer in that small company.

8           Q    It might help the court reporter, your  
9   English is excellent, but you combine somewhat of an  
10   accent with very quick speech, so it might help the  
11   court reporter just to slow down, if you can.

12          A    I will try, but it has been remarked in  
13   the past that even when I repeat myself, I'm still  
14   speaking too fast. I will try, but I don't  
15   guarantee any success.

16          Q    If you hear groans from your right,  
17   then --

18          A    I have no problem repeating myself five  
19   times. I've been doing it all my life, including in  
20   Greek.

21          Q    Now, since -- and then when you left  
22   Automatic Cell --

23          A    Automated Cell.

24          Q    -- this year, what did you do next?

25          A    I'm currently not employed.



1 STATE OF CALIFORNIA )

2 : ss

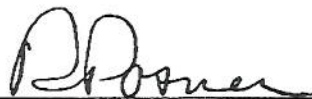
3 COUNTY OF SAN FRANCISCO )

4  
5 I, the undersigned, a Certified Shorthand  
6 Reporter of the State of California, do hereby certify:

7 That the foregoing proceedings were taken before  
8 me at the time and place herein set forth; that any  
9 witnesses in the foregoing proceedings, prior to  
10 testifying, were placed under oath; that a verbatim record  
11 of the proceedings was made by me using machine shorthand  
12 which was thereafter transcribed under my direction;  
13 further, that the foregoing is an accurate transcription  
14 thereof.

15 I further certify that I am neither financially  
16 interested in the action nor a relative or employee of any  
17 attorney of any of the parties. IN WITNESS WHEREOF, I  
18 have this date subscribed my name.

19 Dated: 11-16-2007.

20  
21 

22 RICK POSNER CSR No. 5040  
23  
24  
25

# **EXHIBIT D**

DANIEL JOHNSON, JR. (SBN 574090)  
RITA E. TAUTKUS (SBN 162090)  
MORGAN, LEWIS & BOCKIUS LLP  
One Market, Spear Street Tower  
San Francisco CA 94105  
Telephone: (415) 442-1000  
Facsimile: (415) 442-1001  
Email: djjohnson@morganlewis.com  
Email: rtautkus@morganlewis.com

Attorneys for Plaintiff  
UNIVERSITY OF PITTSBURGH

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

UNIVERSITY OF PITTSBURGH OF THE  
COMMONWEALTH SYSTEM OF HIGHER  
EDUCATION d/b/a UNIVERSITY OF  
PITTSBURGH

Plaintiff,

v.

VARIAN MEDICAL SYSTEMS, INC.

Defendant.

Case No. CV 08-02973 MMC

**DECLARATION OF LAURA HILLOCK  
IN RESPONSE TO JULY 16, 2008  
COURT ORDER RE:  
ADMINISTRATIVE MOTIONS TO  
SEAL DOCUMENTS**

Date: August 29, 2008  
Time: 9:00 a.m.  
Courtroom 7, 19th Floor

1 I, Laura Hillock, declare as follows:

2 1. I am an Associate General Counsel of the University of Pittsburgh. I am authorized  
3 to represent University of Pittsburgh. The matters referred to in my declaration are based on my  
4 personal knowledge and, if called as a witness, I could and would testify competently to those  
5 matters.

6 2. I have reviewed the documents contained in Exhibit S of the Sealed Declaration of  
7 Matthew H. Poppe in Support of Varian's Motion to Transfer Action to U.S. District Court for  
8 Western District of Pennsylvania. The documents contained in Exhibit S were produced by the  
9 University of Pittsburgh in the Western District of Pennsylvania action, Case No. 07-0491, labeled  
10 with Bates numbers PITT00001625-72 and PITT00002018-23, and designated as Confidential  
11 Information pursuant to the Protective Order (Docket No. 29, as amended Docket No. 331) entered  
12 in the Western District of Pennsylvania action, Case No. 07-0491.

13 3. The documents in Exhibit S contain communications from previous patent licensing  
14 negotiations between the University of Pittsburgh and Varian Medical Systems, Inc. including  
15 proposed term sheets. University of Pittsburgh considers the details of its licensing negotiations to  
16 be confidential between the parties of the negotiation. These details are commercial information  
17 which is not publicly known and is of commercial advantage to University of Pittsburgh. For  
18 example, if this information were known by other potential licensees, it would affect our ability to  
19 license the patents that were subject to these negotiations with Varian and other similar patents to  
20 these potential licensees. Accordingly, University of Pittsburgh requests that all of the documents  
21 included in Exhibit S be filed under seal, namely the documents Bates labeled as PITT00001625-72  
22 and PITT00002018-23.

23 4. I have reviewed Exhibit R of the Sealed Declaration of Matthew H. Poppe in Support  
24 of Varian's Motion to Transfer Action to U.S. District Court for Western District of Pennsylvania,  
25 and found that it contains pages 1, 2, 4-6, 22-25, 48-53, and 120 of the transcript from the deposition  
26 of Alexander Ducruet, Ph.D., who was University of Pittsburgh's Rule 30(b)(6) designee for the  
27 deposition taken on October 2, 2007, in the Western District of Pennsylvania action, Case No. 07-  
28 0491. Portions of these excerpts reveal how University of Pittsburgh prepares term sheets for use in

1 patent licensing agreements. This information is commercial information which is not publicly  
2 known and is of commercial advantage to the University of Pittsburgh. For example, if this  
3 information were known by potential licensees, it would affect our ability to license our patents to  
4 these potential licensees.

5 5. Accordingly, University of Pittsburgh requests that page 49, line 13 to page 53, line  
6 25 of the October 2, 2007 deposition transcript of Alexander Ducruet, Ph.D., be filed under seal.  
7 University of Pittsburgh has no objection to the remaining pages of Exhibit R, namely 1, 2, 4-6, 22-  
8 25, 48, 49 (excluding lines 13-25), and page 120, being filed in the public record.

9 I declare under penalty of perjury under the laws of the United States of America that the  
10 foregoing is true and correct and that this declaration was executed this 22<sup>nd</sup> day of July, 2008, at  
11 Pittsburgh, Pennsylvania.

12  
13 By:   
14 Laura Hillock

15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

# **EXHIBIT E**

# **EXHIBIT R**

( REDACTED )

FOR ATTORNEYS' EYES ONLY

1

1 IN THE UNITED STATES DISTRICT COURT FOR THE  
2 WESTERN DISTRICT OF PENNSYLVANIA

3 UNIVERSITY OF PITTSBURGH, )  
4 )

5 Plaintiff, )  
6 )

7 -vs- )

Case No.  
07-CV-0791 (AJS)

8 VARIAN MEDICAL SYSTEMS, INC., )  
9 )

10 Defendant. )  
11 )

12 CERTIFIED TRANSCRIPT  
13

14 CONFIDENTIAL - ATTORNEYS' EYES ONLY  
15

16 DEPOSITION OF: ALEXANDER DUCRUET, Ph.D.  
17

18 DATE: October 2, 2007  
19 Tuesday, 2:39 p.m.

20 LOCATION: PICADIO SNEATH  
21 MILLER & NORTON  
22 4710 U.S. Steel Tower  
23 600 Grant Street  
24 Pittsburgh, PA 15219

25 TAKEN BY: Defendant

REPORTED BY: Heidi H. Willis, RPR, CRR  
Notary Public  
AKF Reference No. HW03476A



1 DEPOSITION OF ALEXANDER DUCRUET, Ph.D.,  
2 a witness, called by the Defendant for examination,  
3 in accordance with the Federal Rules of Civil  
4 Procedure, taken by and before Heidi H. Willis, RPR,  
5 CRR, a Court Reporter and Notary Public in and for  
6 the Commonwealth of Pennsylvania, at the offices of  
7 Picadio Sneath Miller & Norton, 4710 U.S. Steel  
8 Tower, Pittsburgh, Pennsylvania, on Tuesday, October  
9 2, 2007, commencing at 2:39 p.m.

6 - - - -

8 APPEARANCES:

9 FOR THE PLAINTIFF:

10 Rita E. Tautkus, Esq.  
11 MORGAN LEWIS & BOCKIUS, LLP  
12 One Market, Spear Street Tower  
13 San Francisco, CA 94105  
14 P 415-442-1357  
15 F 415-442-1001  
16 rtautkus@morganlewis.com

17 - and -

18 Laura R. Hillock, Esq.  
19 UNIVERSITY OF PITTSBURGH  
20 1710 Cathedral of Learning  
21 Pittsburgh, PA 15260  
22 P 412-624-0216  
23 F 412-624-9165  
24 thillock@pitt.edu

25 FOR THE DEFENDANT:

20 Henry Sneath, Esq.  
21 Shannon Clougherty, Esq.  
22 PICADIO SNEATH MILLER & NORTON  
23 4710 U.S. Steel Tower  
24 600 Grant Street  
25 Pittsburgh, PA 15219  
412-288-4000  
hsneath@psmn.com

1 ALEXANDER DUCRUET, Ph.D.,  
2 being first duly sworn,  
3 was examined and testified as follows:

4 - - - -  
5 EXAMINATION  
6 - - - -

7 BY MR. SNEATH:

8 Q. Mr. Ducruet, my name is Henry Sneath. I  
9 represent Varian Medical Systems in a lawsuit  
10 filed by the University of Pittsburgh that's  
11 here in the Western District.

12 I'm going to ask you questions today  
13 about those claims and related topics, and you  
14 are entitled to understand my questions. If  
15 you don't understand them, please ask me to ask  
16 them again or rephrase them, and I'll be happy  
17 to do that.

18 If you need to consult with your  
19 counsel at any time, please feel free to do  
20 that as well. If you need to take a personal  
21 break, just let me know as well. Okay?

22 A. Yes, okay.

23 Q. You need to keep all of your responses verbal.  
24 Try to keep your voice up so that Heidi, our  
25 court reporter, can take down everything you

1 say.

2 I will let you finish your answers if  
3 you'll let me finish my questions. I'll do it  
4 anyway even if you don't let me finish them,  
5 but let's try not to talk over each other and  
6 let each other finish completely.

7 Be aware that there will be times  
8 when your counsel will impose objections, and  
9 then she will instruct you as to whether you  
10 are to answer or not answer depending on what  
11 her objection is. Sometimes she will be  
12 jumping in between what you and I say. Okay?

13 A. Okay.

14 Q. State your full name, please.

15 A. Alexander Ducruet.

16 Q. What's your home address?

17 A. 100 Thornberry Drive.

18 Q. We are getting the tough ones out of the way  
19 early. 100 Thornberry Drive?

20 A. Pittsburgh, PA 15235.

21 Q. Okay. And what's your employment position at  
22 Pitt?

23 A. Technology licensing manager in the office of  
24 technology management.

25 Q. And how long have you been in that position?

- 1 A. A little over two years.
- 2 Q. And where were you employed before that?
- 3 A. At the University of Pittsburgh.
- 4 Q. As what?
- 5 A. A postdoctoral researcher in the department of
- 6 pharmacology.
- 7 Q. It sounds like we are getting back to the time
- 8 of your education or thereabouts. Why don't
- 9 you tell me where you went to school and what
- 10 degrees you have.
- 11 A. From the beginning?
- 12 Q. Well, we can skip grade school, middle school
- 13 and high school. College and beyond.
- 14 A. I have a bachelor's degree in biochemistry from
- 15 the University of Michigan and a Ph.D. in
- 16 molecular pharmacology from the University of
- 17 Pittsburgh.
- 18 Q. Did you immediately, after getting the advanced
- 19 degree, go to work at Pitt?
- 20 A. Yes.
- 21 Q. And the job just before you were in the tech
- 22 licensing job; right?
- 23 A. Correct.
- 24 Q. And what was the name of that position again?
- 25 A. Postdoctoral researcher.



1 A. No.

2 Q. Would you take a look at Exhibit 3. Should be  
3 fairly close to the top. This is dated August  
4 26th, 1996. Clearly you were not there at the  
5 time; right?

6 A. Correct.

7 Q. Do you know just who the people are down at the  
8 bottom? Do you know any of them from your more  
9 recent work there, Jodi Buntain, Joyce Yasko,  
10 Melvin Deutsch? Do you know who any of them  
11 are?

12 A. No.

13 Q. Can you recall what the first exposure that you  
14 had in your job at Pitt, what your first  
15 exposure was to the technology that is the  
16 subject of the two patents that are at issue in  
17 this lawsuit? Do you remember what your first  
18 connection was to any of that?

19 A. Yes.

20 Q. Can you just tell me generally what it was so I  
21 can get a time reference and sort of a context  
22 for your involvement?

23 A. I was asked by our director to follow up on an  
24 inquiry made to our office from Varian in  
25 response to the Kalend patents.

1 Q. And that's Mr. Kalend you are talking about?  
2 Did I say his name?

3 A. Kalend, Andre Kalend.

4 Q. Oh, Kalend. No, you said by your director?

5 A. Yes.

6 Q. Your department director, who is that?

7 A. Marc Malandro.

8 Q. Malandro, I see. So Mr. Malandro asked you to  
9 respond to Varian regarding Varian's right?

10 A. I'm sorry, could you repeat the last part of  
11 it?

12 Q. He asked you to respond to Varian, that was  
13 your involvement?

14 A. Yes.

15 Q. What documentation or information were you  
16 provided to get started in that process?

17 A. Copy of an e-mail.

18 Q. Did you do any research, investigation, due  
19 diligence, whatever you want to call it prior  
20 to communicating with Varian on issues that you  
21 thought would be related?

22 A. No.

23 Q. Did you call them or did you e-mail them?

24 A. I e-mailed Scott Johnson from Varian to set up  
25 a time for a conference call.

- 1 Q. Did there come a time when did you some  
2 research or investigation into the technology  
3 and the patents and other things that would be  
4 at issue in discussing a license with Varian?
- 5 A. Yes, there were -- at a certain point in time,  
6 we did those activities.
- 7 Q. Okay. When you said "we," who are you  
8 referring to?
- 9 A. Myself and Carolyn Webber from our office.
- 10 Q. Okay. What was her job responsibility?
- 11 A. She is a marketing manager at our office.
- 12 Q. Okay. So tell me a little bit about what you  
13 did to learn about the technology and the  
14 patents and other things related to a potential  
15 licensing arrangement?
- 16 A. Well, I spoke with Dr. Greenberger.
- 17 Q. Do you know when you did that?
- 18 A. December of 2005.
- 19 Q. Was that in person or by phone?
- 20 A. In person.
- 21 Q. Did you take notes?
- 22 A. Yes.
- 23 Q. Do you know if he took notes?
- 24 A. I don't remember.
- 25 Q. Was there anybody else present?

1 A. No.

2 Q. What was the substance of that discussion?

3 A. He spoke about several technologies of his, one  
4 of which were the Kalend patents.

5 Q. Okay. And in what context were you discussing  
6 them with him?

7 A. In response to the inquiry from Varian.

8 Q. And the initial inquiry as it was presented to  
9 you related to how many different technologies?

10 A. Two.

11 Q. And how would you delineate the two? What were  
12 they?

13 A. They were the two patent applications -- I'm  
14 sorry, issued patents on the respiratory gating  
15 and the image processing.

16 Q. Okay. Those two patents?

17 A. Correct.

18 Q. Okay. Anything else?

19 A. They made it clear they were not interested in  
20 the third patent on patient positioning.

21 Q. The '192 patent, do you remember? Anyway, I  
22 think we all know what the third one is.

23 A. Yes, I believe that's correct.

24 Q. Okay. So they made it clear they weren't  
25 interested in that. Was there any other topic



1 we may not have given to him. Correct. Here  
2 we go. Apologize.

3 Q. All right. Showing you Exhibit 15. For the  
4 purposes of this deposition today, we did Pitt  
5 exhibits throughout for both witnesses, so we  
6 are not segregating them, so they all bear the  
7 same numeric sequence.

8 Does this e-mail refresh your  
9 recollection as to one of your earliest  
10 involvements in the Varian matter?

11 A. Yes.

12 Q. This was November 17, 2005; correct?

13 A. That's what the e-mail says.

14 Q. Right, but you don't have any reason to doubt  
15 that; right?

16 A. No reason.

17 Q. Would you look and see if Exhibit 16 is in  
18 front of you?

19 A. It is.

20 Q. Was this more follow-up e-mail communication as  
21 you were starting up your communications with  
22 Varian and Scott Johnson?

23 A. That's correct.

24 Q. Take a look, if you have it in front of you, at  
25 Exhibit 19. This is a string of e-mails, the

1 last of which is December 16, 2005, from you to  
2 Scott Johnson; is that correct?

3 A. That's correct.

4 Q. And here you indicate, Please find attached  
5 license terms for the patents by Kalend, et  
6 al., and you look forward to his comments. Do  
7 you see that?

8 A. I do.

9 Q. Take a look at the last two pages of the  
10 exhibit. Would those be the two pages of the  
11 term sheet you submitted with that e-mail?

12 A. Yes.

13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

1 COMMONWEALTH OF PENNSYLVANIA ) CERTIFICATE

2 COUNTY OF ALLEGHENY ) SS:

3 I, Heidi H. Willis, RPR, CRR, a Court Reporter  
 4 and Notary Public in and for the Commonwealth of  
 5 Pennsylvania, do hereby certify that the witness,  
 6 ALEXANDER DUCRUET, Ph.D., was by me first duly sworn  
 7 to testify to the truth; that the foregoing  
 8 deposition was taken at the time and place stated  
 9 herein; and that the said deposition was recorded  
 10 stenographically by me and then reduced to printing  
 11 under my direction, and constitutes a true record of  
 12 the testimony given by said witness.

13 I further certify that the inspection, reading  
 14 and signing of said deposition were NOT waived by  
 15 counsel for the respective parties and by the  
 16 witness.

17 I further certify that I am not a relative or  
 18 employee of any of the parties, or a relative or  
 19 employee of either counsel, and that I am in no way  
 20 interested directly or indirectly in this action.

21 IN WITNESS WHEREOF, I have hereunto set my hand  
 22 and affixed my seal of office this 10th day of  
 23 October, 2007.

24  
 25  
 COMMONWEALTH OF PENNSYLVANIA  
 Notary Public  
 Heidi H. Willis, Notary Public  
 City Of Pittsburgh, Allegheny County  
 My Commission Expires July 8, 2008

# **EXHIBIT F**

## **EXHIBIT 23**

**~~FILED UNDER SEAL~~**

IN THE UNITED STATES DISTRICT  
NORTHERN DISTRICT OF CALIFORNIA

UNIVERSITY OF PITTSBURGH,	)	
	)	
Plaintiff	)	
	)	Case No.
vs.	)	07-CV-0791 (AJS)
	)	
VARIAN MEDICAL SYSTEMS,	)	Western District of
	)	Pennsylvania
	)	
Defendant.	)	
	)	

---

HIGHLY CONFIDENTIAL ATTORNEYS' EYES ONLY  
VIDEOTAPED DEPOSITION OF KARUN B. SHIMOGA, PhD  
August 31, 2007

Reported by:  
Rick Posner  
CSR No. 5040

IN THE UNITED STATES DISTRICT  
NORTHERN DISTRICT OF CALIFORNIA

1 UNIVERSITY OF PITTSBURGH, )  
2 )  
3 )  
4 Plaintiff )  
5 ) Case No.  
6 vs. ) 07-CV-0791 (AJS)  
7 )  
8 VARIAN MEDICAL SYSTEMS, ) Western District of  
9 ) Pennsylvania  
10 )  
11 )  
12 Defendant. )  
13 )  
14 )  
15 )  
16 )  
17 )  
18 )  
19 )  
20 )  
21 )  
22 )  
23 )  
24 )  
25 )

Deposition of KARUN B. SHIMOGA, PhD  
taken on behalf of the Defendant at  
1000 Marsh Road, Menlo Park, CA  
beginning at 8:57 a.m. and ending at  
6:02 p.m. on Friday, August 31, 2007  
before Rick Posner, CSR No. 5040.



1 KARUN B. SHIMOGA, PhD,  
2 Having been first duly sworn, was examined and  
3 testified as follows:  
4

5 THE VIDEOGRAPHER: Good morning. Here  
6 begins the deposition of Dr. Karun Shimoga in the  
7 matter of University of Pittsburgh versus Varian  
8 Medical Systems, Inc. This case is filed in the  
9 United States District Court for the Western  
10 District of Pennsylvania. And the case number is 8:57:38AM  
11 2:07-CV-00491-AJS. Today's date is August 31st,  
12 2007, and the time is 8:57 a.m.

13 This deposition is taking place at the law  
14 offices of Orrick, Herrington & Sutcliffe, LLP,  
15 located at 1000 Marsh Road, Menlo Park, California, 8:58:02AM  
16 94025, and is being taken on behalf of the  
17 defendants. The videographer is Ramon Peraza  
18 appearing on behalf of US Legal Support. The court  
19 reporter is Rick Posner, also appearing on behalf of  
20 US Legal Support. 8:58:20AM

21 Will counsel present please identify  
22 yourselves for the record and state whom you  
23 represent.

24 MR. POPPE: Matthew Poppe with Orrick on  
25 behalf of Varian Medical Systems. 8:58:27AM